

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.4998 of 1997

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For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES
2. To be referred to the Reporter or not? YES

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge?
NO

JAY ASHAPURIMA KELAVANI MANDAL

Versus

B K SINHA

Appearance:

MS MAMTA R VYAS for Petitioner

MR RM DESAI for Respondent No. 1, 2

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 24/04/98

ORAL JUDGEMENT :

Rule. Shri R.M. Desai, learned advocate waives service of the rule.

2. The petitioner, Jay Ashapurima Kelavani Mandal runs a secondary school, named S.V. Hada High School at village Katwara, Taluka Dahod, District Panchmahals, since 1992, having classes upto Standard-X. It has been trying to get permission to start one class of

Standard-XI in general stream and the request made to this effect was rejected. In the year 1995 the request was renewed and by a letter dated 11.9.1995 the petitioner was conveyed that if the petitioner gives a written undertaking (that if the condition is imposed that the petitioner school will not claim any grant on permanent basis for opening the class of general stream of Standard-XI, it was acceptable to and binding upon the petitioner), then the application for permission can be considered. On 15.11.1995, a reply was given by the Government that permission with grant was not possible and the petitioner can apply in the next year.

3. Lastly, on 29th May 1997 the permission was again refused.

4. The petitioner submits that the petitioner school is in a tribal and backward area; and within 10 KMs. of the petitioner school there is no other school having standard XI. Annexure 'A' is the certificate issued by the Mamlatdar, Dahod certifying that village Katwara is located in tribal area. In para 6 of the affidavit-in-reply also it is admitted that the nearest school is 12 - 15 KMs. away from the petitioner school.

5. At annexure 'D' the petitioner has produced a Government Resolution dated 24.10.1989. Para 2 of the said Resolution states that in earlier Resolution it is resolved that no grant shall be given for five years to new non-governmental higher secondary schools. However, by Resolution of 24.10.1989 the standard has been changed. Condition no.Kh(i) however, is that in tribal area, if there is no school within 10 KMs. and population is 20,000, grant will be given at 50 per cent in the first year and 100 per cent from the next year. Conditions nos.Kh(i) to (iv) cover every such school in tribal area.

6. Even in the latest policy vide Government Resolution dated 31.1.1997, Annexure 'I', page 54, where the Government has tried to economise on grants, this concession for tribal area is maintained and continued. It is reiterated that in backward areas where there is no school within 10 KMs. the permission can be given with grant.

7. In view of this, the refusal of permission to the petitioner school is not justified. The petitioner trust has a High School having classes upto Standard-X, with two classes in Standard-X. If these students have to go to the nearest school, which is at 12 - 15 KMs away for

Standard XI it is very likely that most of the students will leave their studies or they will have to undergo hardship of commuting 12 - 15 KMs. daily to attend the nearest school.

8. When the policy is to take education to the tribal areas even by providing grant, the refusal by authorities to accord permission to the school in question for starting Standard XI, is directly contrary to the policies and purpose of giving permission with grant to the tribal areas.

9. In the result, the petition succeeds. Order dated 29th May 1997 passed by respondent no.2, is quashed and set aside. Respondents are directed to grant permission with grant to the petitioner to start one class of Standard XI (general stream) in the petitioner school. This permission will be effective from the next academic year commencing from June 1998. The petitioner will have to comply with the usual conditions governing such permission and the grant. Rule is made absolute accordingly with costs.

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